



*State of California*

## **OFFICE OF THE INSPECTOR GENERAL**

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**FOR IMMEDIATE RELEASE**

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### **The Bureau of Independent Review Finds Shooting of Inmate Provencio Was Thoroughly Investigated and Did Not Violate Policy**

The Office of the Inspector General's Bureau of Independent Review has concluded that the weight of the evidence supports earlier findings of a Department of Corrections' internal affairs investigation and two other investigative bodies that the correctional officer who shot a sponge projectile at Wasco State Prison inmate Daniel Provencio on January 16<sup>th</sup> acted reasonably and did not violate department use-of-force policy by his actions. However, a lack of training with the weapon, along with other factors, may have contributed to the officer's failure to hit the inmate's leg as intended. Provencio, who was struck in the head by the projectile, died of his injuries almost two months later.

Announcing the results of a five-week special review into the circumstances surrounding the incident by the Inspector General's Bureau of Independent Review, Chief Assistant Inspector General David Shaw said the earlier investigations were thorough and timely and showed no evidence of bias. The Bureau of Independent Review did find, however, that inadequate weapons training at the prison and the peculiarities of the weapon used in the shooting might have contributed to the inmate's death.

The shooting took place as an officer, who was alone on the floor with about 38 inmates, tried to break up a fight that had erupted during a Sunday evening meal after one inmate dumped food on another inmate and hit him on the head with a tray.

As the two inmates began fighting, the officer ordered all of the inmates down to the floor. Most of the inmates complied, but Provencio, who had not been involved in the fight and was later determined

to be intoxicated, instead began moving toward the officer in what numerous witnesses, including both officers and inmates, described as a hostile and threatening manner.

Fearing for the safety of the officer on the floor, a second officer in an elevated control booth fired a direct-impact sponge projectile at Provencio from a 40mm launcher—a weapon intended to be non-lethal. The officer, who shot from a distance of 53 feet about 12 feet above the floor, said he aimed for the inmate’s upper right thigh, but the projectile instead struck Provencio on the left side of his forehead. Provencio went down briefly, but got up again and continued to resist other officers who had been called to the scene.

Provencio was subsequently subdued and taken to the prison infirmary. During attempts to treat his injury he lost consciousness and was taken by ambulance to Mercy Hospital in Bakersfield where his blood alcohol level was determined to be .152 percent — almost twice the legal limit in California for driving a motor vehicle. He went into a coma and ultimately died on March 4<sup>th</sup>. The medical examiner listed the cause of death as blunt force trauma to the head.

An investigation by the Office of Internal Affairs of the Department of Corrections, which included interviews of 112 witnesses, found no criminal misconduct on the part of the officer who shot the projectile.

Another investigation by the Law Enforcement and Investigations Unit of the Department of Corrections concluded that the officer had complied with department policy, and a third investigation by the Wasco State Prison use-of-force committee found that the officer acted in a reasonable manner under the circumstances.

The Bureau of Independent Review found the evidence supported those conclusions, but also identified factors that may have contributed to the inmate’s death by causing him to be hit in the head by the projectile instead of in the leg. Investigators found that the 40mm launcher has a longer than normal trigger pull, which can cause the shooter to unintentionally raise the point of aim. Independent testing showed that direct-impact projectiles fired from this weapon at a distance of 53 feet in a slightly downward angle tend to rise four to five inches above the point of aim. Those tendencies, together with Provencio’s movement toward the shooter, all contributed to the projectile striking Provencio in the head rather than in the leg.

In addition, the Bureau of Independent Review found the training received by Wasco State Prison correctional officers on this direct-impact weapon was inadequate. The investigators determined that because the ammunition for the 40mm launcher costs \$20 to \$25 per round, officers are rarely, if ever, given an opportunity to shoot live rounds in training, meaning that the first time they shoot a live round may be in an emergency, perhaps resulting in an inaccurate shot.

The full text of the Inspector General's public report of the review can be viewed and downloaded from the Office of the Inspector General's web site at <http://www.oig.ca.gov/>. To view the report on the website, click on the report title, "Special Review Into the Death of Inmate Daniel Provencio on January 16, 2005 at Wasco State Prison," on the home page or on the link entitled "Reports – Audit and Special Review Reports" under "Wasco State Prison."

The Office of the Inspector General is an independent state agency responsible for oversight of the California correctional system, including the Department of Corrections and the California Youth Authority. The office carries out its mission by auditing and investigating correctional organizations under the Youth and Adult Correctional Agency to uncover criminal conduct, administrative wrongdoing, poor management practices, waste, fraud, and other abuses by staff, supervisors, and management.

The special review was conducted under the authority provided to the Inspector General's Bureau of Independent Review by Penal Code section 6131, which requires the bureau to provide contemporaneous oversight of investigations conducted by the Department of Corrections, Office of Internal Affairs. The Bureau of Independent Review was established within the Office of the Inspector General as a result of a settlement between the Department of Corrections and plaintiffs in a court action involving illegal use of force by correctional officers at Pelican Bay State Prison. Additional information regarding the Bureau of Independent Review can be found at <http://oig.ca.gov/review.asp>.